IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.630 OF 2004

Shri Krishna Shivappa Khot & Ors.. Appellants

Versus

Shri Bhaskar G. Joshi & Ors. .. Respondents

Mr.C.G.Gavnekar for appellants

None for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6TH OCTOBER 2004.

P.C.

1. Heard Shri Gawnekar for the appellants. The lower appellate court has rightly dismissed the suit filed by the appellants by holding that the material produced on record, including exh.91 do not show that the appellants are in possession of the suit property. On the other hand, noticing the inconsistency and variance in pleadings and proof, lower appellate court has recorded a inding of fact that the appellants are

not entitled to claim declaration of title and permanent injunction to protect the possession in the facts and circumstances of the present case. On consideration of oral and documentary evidence on record, the lower appellate court has dismissed the appellants' suit by reserving the judgement of trial court. The lower appellate court has performed its duty as a first appellate court by appreciating all materials on record and concluding that the appellants herein have failed to show that they are in possession of the suit land.

2. Learned Counsel appearing for the appellants was unable to point out to me any issue of law much less a substantial question of law arising for consideration of this court in the second appeal. This court cannot reappraise and re-appreciate materials on record and come to a different conclusion than that of the lower appellate court on facts. No substantial question of law has been raised in the second appeal and the same is accordingly dismissed. No costs. In view of the dismissal of the appeal C.A. does not survive. Ad-interim order to

stand vacated.

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